

### **REMARKS**

The Office Action dated May 13, 2009 has been received and reviewed. This response, submitted along with a Petition for a Three-Month Extension of Time, is directed to that action.

The applicants respectfully request reconsideration in view of the foregoing amendments and the following remarks.

#### **Claim Rejections- 35 U.S.C. §102**

The Examiner rejected claims 1, 2, 8, 10-15, 19-23, 26, 28-32 and 34 under 35 U.S.C. §103(a) as obvious over Foley et al. (WO 00/63342). The applicants respectfully traverse this rejection.

The Examiner stated that an Example A, Sample E of Foley teaches a composition of the presently claimed invention except that Foley is silent regarding the color of each of the compositions and solid prills interacting together to form a third color. However, the Examiner relies on a theory of inherency to support this novelty rejection, stating that it would be inherent for the dyed composition and colored prills of Foley to exhibit the same property because the same ingredients and proportions have been utilized.

In response, Applicants would remind the Examiner that anticipation requires that each and every element as set forth in the claim must be found, either expressly or inherently described, in a single prior art reference, and, further, if the Examiner relies on a theory of inherency as to any particular element, then the extrinsic evidence must make clear that such element is *necessarily* present in the thing described in the reference, and the presence of such element therein would be so recognized by persons skilled in the art. *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). Further, inherency is not established by probabilities

or possibilities, and the mere fact that a property may result from a given circumstances is not sufficient; instead it must be shown that such property *necessarily* inheres in the thing described in the reference. *Id.* In the present case, the applicants submit that simply because two components of a composition have different colors does not *necessarily* meant that these colors will interact to produce a third color. Indeed, these components must emit a transmittance sufficient to achieve the third color. This is by no means certain to occur in Foley. Accordingly, the applicants submit that because Foley does not *necessarily* teach all of the limitations of the presently claimed invention, the claims are not anticipated by this reference, and the applicants respectfully request that the Examiner withdraw this rejection.

#### Claim Rejections- 35 U.S.C. §103

The Examiner rejected claims 35-38 under 35 U.S.C. §103(a) as obvious over Foley. The applicants respectfully traverse this rejection.

The applicants submit that a *prima facie* case of obviousness cannot be established because the reference does not teach or suggest all of the limitations of the presently claimed invention. As stated hereinabove, Foley fails to teach or suggest anything about the components of the detergent composition having a first color and a second color such that the radiation transmitted by the gel having a first color interacts with the radiation from the second color of the primary particles to produce a third color. Indeed, the Examiner only supports this contention through a theory of inherency, but there is nothing in the reference that would suggest that a third color is necessarily produced. As mentioned previously, the transmittance of the components *must* be such that a third color is produced, and this does not simply occur without specific selection of components with a required transmittance.

Because Foley is completely silent on this element, there would be no reason for a person of ordinary skill in the art to modify the reference to achieve the present invention. The applicants submit that a *prima facie* case of obviousness cannot be established, and respectfully request that the Examiner withdraw this rejection.

The Examiner also rejected claims 1-8, 10-15, 19-22, 29-32 and 34-42 under 35 U.S.C. § 103(a) as obvious over Broeckx (WO 00/47707); and claim 33 over Broeckx in view of Fonsny (US 4,846,992). The applicants respectfully traverse this rejection.

The Examiner rightfully acknowledges that Broeckx fails to teach (1) the claimed water content of the claimed invention; (2) a non-aqueous component comprising a salt content greater than 70%; and (3) the interaction of the radiation emitted by the gel and colored particles and solids forming a third color, the transmittance of the composition and migration speed of the particles in the gelled composition. The applicants submit that the differences between present invention and Broeckx are outside the level of ordinary skill in the art.

While the Examiner contends that it would have been obvious to modify Broeckx in order to achieve the presently claimed invention, the applicants submit that a person of ordinary skill in the art would have had to make too many modifications to the prior art. Accordingly, the applicants submit that the present invention is not obvious over Broeckx, and respectfully request that the Examiner withdraw this rejection.

Claims 1, 3-8, 10-15, 19-32, 34-36, and 39-42 were rejected under 35 U.S.C. § 103(a) as obvious over Corring et al. (US 5,141,664); and claim 33 as obvious over Corring in view of Fonsny. The applicants respectfully traverse these rejections.

The Examiner notes that Corring teaches a composition that fails to teach a detergent composition having a gel with first color and primary particles having a second color such that

the radiation transmitted by the gel having a first color interacts with the radiation from the second color of the primary particles to produce a third color. The Examiner once again reasons that it would have been obvious to modify Corring by adding dyes in order to achieve the presently claimed invention.

In response, the applicants submit that, at the time of the invention, there was neither a teaching to do so nor an expectation of success that doing so would provide a workable product. There is no reason why a skilled artisan would have modified Corring, and any suggestion to do so is clearly based on an impermissible hindsight reconstruction of the presently claimed invention. Accordingly, without any motivation to modify Corring, the applicants submit that a *prima facie* case of obviousness cannot be established, and respectfully request that the Examiner withdraw these rejections.

The applicants submit that the claims are now in condition for allowance, and such favorable action is respectfully requested. If any issues remain, the resolution of which can be advanced through a telephone conference, the Examiner is invited to contact the applicant's attorney at the phone number listed below.

#### **CONDITIONAL PETITION FOR EXTENSION OF TIME**

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefore. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

